CURE

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Via Regulations.gov and email

Megan Healy
Principal Deputy Director for NEPA
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Removal of National Environmental Policy Act Implementing Regulations; 90 Fed.Reg. 10610; Docket No. CEQ-2025-0002

Dear Ms. Healy,

CURE is a rurally based, non-profit organization dedicated to protecting and restoring resilient towns and landscapes by harnessing the power of the people who care about them. We appreciate the opportunity to comment in opposition to the removal of the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) Implementing Regulations (NEPA Regulations). Removing these rules of the road for federal agencies is contrary to NEPA, the remaining authority granted by executive order, and requirements of other law – such as Tribal treaty obligations and trust responsibility. It is foolish to leave agencies with no clear guidance, especially if the intent is to produce better or faster NEPA analyses. Removing these standards this will only create chaos and make orderly review of major federal actions into a process plagued with uncertainty. At the very least, the CEQ should halt this process immediately and undergo full consultation with Tribes rather than removing the regulations as proposed in the Federal Register notice.

I. The history of the CEQ Implementing Regulations demonstrates why they are necessary and still required under the law

The NEPA Regulations exist to fulfill the statute's original intent: ensuring informed, uniform consideration of environmental impacts in federal decision-making. Congress enacted NEPA in 1969 to establish a national policy for protecting the environment and mandating that federal agencies use "all practicable means" to allow humans and nature to exist in productive

harmony.[1] The statute mandates that "it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources . . ."[2] To that end, NEPA requires agencies to take a "hard look" at the environmental effects of proposed actions significantly affecting the environment.[3] It became clear early on, however, that NEPA's broad mandate left both agencies and courts with little specific direction as to how to implement these requirements. This led to inconsistencies and inefficiencies in practices across the federal government. Already by the mid-1970s, nearly seventy different sets of agency NEPA procedures existed, creating confusion and uneven application of law.[4]

To fix this problem, President Nixon first directed the Council on Environmental Quality (CEQ) in 1970 to issue guidelines for agency NEPA compliance.[5] Though CEQ conceived of these guidelines as non-discretionary, many agencies and courts did not. In CEQ's own words, the result was an "evolution of inconsistent agency practices and interpretations of the law. The lack of a uniform, government-wide approach to implementing NEPA has impeded Federal coordination and made it more difficult for those outside government to understand and participate in the environmental review process. It has also caused unnecessary duplication, delay and paperwork."[6] Given the blatantly apparent failings of non-discretionary CEQ guidelines, President Carter issued Executive Order 11991 in 1977, which explicitly mandated CEQ to issue binding regulations for NEPA's procedural provisions for all agencies.[7] Since the first uniform NEPA regulations were promulgated under this authority, CEQ rules have served as the baseline framework that all agencies follow in conducting environmental reviews. Rather

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[1] 42 U.S.C. 4331(a). Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610, 10611 (Feb. 25, 2025), https://www.federalregister.gov/documents/2025/02/25/2025-03014/removal-of-national-environmental-policy-act-implementing-regulations [hereinafter "CEQ Regulation Removal"].
[2] 42 U.S.C. 4331(b).
[3] CEQ Regulation Removal.
[4] 43 Fed. Reg. 55,978–79 (Nov. 29, 1978); *see Marin Audubon Soc'y v. Fed. Aviation Admin.*, 121 F.4th 902, 911 (D.C. Cir. 2024) (discussing President Carter's directive to promulgate CEQ NEPA regulations).
[5] Exec. Order No. 11,514, 35 Fed. Reg. 4247 (Mar. 5, 1970), https://www.presidency.ucsb.edu/documents/executive-order-11514-protection-and-enhancement-environmental-quality.
[6] Implementation of Procedural Provisions, 43 Fed. Reg. 55,978 (Nov. 29, 1978), https://ceq.doe.gov/docs/laws-regulations/FR-1978-11-29-43-FR-55978-CEQ-NEPA-Regulations-NOFR.pdf.
[7] Exec. Order No. 11,991, 42 Fed. Reg. 26,967 (May 24, 1977), https://www.presidency.ucsb.edu/documents/executive-order-11991-environmental-impact-statements.

than leaving each agency to reinvent the wheel and concoct its own process—a recipe for confusion taught over forty years ago—CEQ regulations ensure that NEPA's mandate is carried out consistently and predictably.

It is important to note here that EO 11514 *has not* been rescinded. In removing EO 11991 the current administration has not removed the duty of the CEQ to:

> (a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. . . .
> (b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.
> (c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed. . . .
> (f) Coordinate Federal programs related to environmental quality. . . .
> (i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.[8]

These duties may not be the same as were established in EO 11991, but they are hardly meaningless and without effect. Moreover, the administration has not and cannot unilaterally change NEPA section 101's command that "it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources" – this is in essence what the NEPA Regulations effectively have done over the past decades, assuring that CEQ and all agencies use practicable means to improve plans, functions, programs and resources.

Thus, both the remaining guidance from established Executive Orders as well as the statute itself argue in favor of pausing this removal process and reassessing how CEQ will continue to meet these requirements in the absence of its NEPA Regulations. As the central entity created by NEPA, and consistent with EO 11514, CEQ has an ongoing duty to assure that all agencies meet their obligations under NEPA, and keeping NEPA Regulations on the books is the most straightforward way to follow mandatory law and policy.

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[8] Executive Order 11514—Protection and Enhancement of Environmental Quality, Mar. 5, 1970, https://www.presidency.ucsb.edu/documents/executive-order-11514-protection-and-enhancement-environmental-quality.

II. Removing the NEPA Regulations will cause significant harm across the country and world

Dismantling CEQ's NEPA regulations would strip away crucial environmental safeguards, jeopardizing significant advancements in environmental justice, climate change mitigation, cumulative impacts analysis, and tribal consultation. Agency decision-makers ought to have as much information as possible, yet this recission seeks to willfully blind our decision-makers from the reality of our world, sticking our nation's head back into the sand it escaped from in the 1970s.

A. Communities with environmental justice concerns

The current CEQ regulations (especially after recent revisions in the 2020s) ensure that agencies explicitly evaluate impacts on disadvantaged and overburdened communities. The current NEPA Regulations, as revised over the course of 2022–2024, require agencies to consider alternatives and mitigation measures to address impacts to communities with environmental justice concerns.[9] They also add "impacts to communities with environmental justice concerns" as a criterion for evaluating the significance of project effects.[10] These provisions operationalize the policy of E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) within NEPA reviews.[11] If the NEPA Regulations are removed, there will be no uniform mandate that agencies analyze how a project might disproportionately harm vulnerable communities or compare alternatives to reduce such harm. This would turn back the clock on hard-won environmental justice advances. Agencies that lack their own EJ policies could ignore these impacts, and affected communities and individuals would lose a crucial mechanism to have their voices and interests considered in federal decisions.

This is especially concerning to CURE. We are focused on working with rural communities to make the places they live in and care for better. Environmental injustice is not exclusive to the country's urban locales and the harms of resource extraction and predation disproportionately impact rural places. By removing these standards, currently laid out in the NEPA Regulations, the CEQ will be removing fundamental protections for low-income, Indigenous, Black and other rural communities who are most vulnerable to being ignored and

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[9] Matt Petersen, *Examining the Phase 2 Final Rule's Impacts on the National Environmental Policy Act*, SWCA Environmental Consultants (May 17, 2024), https://www.swca.com/news/2024/05/examining-phase-2-final-rule%E2%80%99s-impacts-on-national-environmental-policy-act.

[10] *Id.*

[11] Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994), https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf.

sidelined by federal decisionmakers. Local control and local input must continue to be a part of NEPA processes going forward.

B. Greenhouse gas emissions and climate impacts

Under the NEPA Regulations, agencies must evaluate a project's greenhouse gas emissions and climate change effects as part of NEPA's "reasonably foreseeable" impacts analysis. CEQ's guidance and regulations (including the 2022 Phase 1 rule) have clarified that climate-related impacts are within NEPA's scope as they are reasonably foreseeable cumulative effects. The most recent Phase 2 final rule in 2024 strengthened this by defining the "environmentally preferred alternative" as the option that best promotes national environmental policy including by addressing climate impacts.[12] Removing these aspects of the NEPA Regulations risks diminishing or eliminating consistent climate change reviews. Some agencies might attempt to sidestep analysis of a project's carbon footprint or resilience to climate effects absent CEQ's direction that such factors be considered. Missing out on climate change adaptation analysis will mean that projects get built in places prone to flood or fire, wasting many millions of dollars siting projects in vulnerable places.

The loss of cumulative impact analysis also directly harms climate analysis, since climate change is quintessentially a cumulative, incremental impact issue. Without a uniform requirement to assess these issues, federal decisions may fail to account for how projects contribute to or are affected by climate change, leading to poorer outcomes and greater long-term costs for all of us. It could also lead to unresolved disagreements between agencies with the principal responsibility to do a NEPA review and the agencies with the best data on climate/cumulative impacts. Creating this gap between expert agencies and responsible agencies will only lead to chaotic implementation of the law that is not consistent with science or good governance.

C. Cumulative and indirect impacts

One of NEPA's most important requirements, included in CEQ's regulations since 1978, is to consider not just the direct effects of an action, but also its indirect and cumulative impacts in combination with other past, present, and reasonably foreseeable future actions. CEQ's now-rescinded 2020 rules had infamously eliminated the definition of "cumulative impact," but the

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[12] Matt Petersen, *Examining the Phase 2 Final Rule's Impacts on the National Environmental Policy Act*, SWCA Environmental Consultants (May 17, 2024), https://www.swca.com/news/2024/05/examining-phase-2-final-rule%E2%80%99s-impacts-on-national-environmental-policy-act.

2022 Phase 1 rule restored the requirement that agencies consider cumulative effects. [13] If the NEPA Regulations are now removed entirely, there is a serious risk that some agencies will perform shoddy analysis of cumulative impacts. This would be a major loss and expose those agencies (and the industries they work with) to more litigation risk.

Cumulative impact review is often the only way to understand the full environmental significance of proposals. For example, a single highway segment or oil well might seem insignificant in isolation, but when considered in relation to other similar projects, can cause profound harm (in terms of air pollution, habitat fragmentation, climate impacts, etc.). NEPA's power is in requiring that broader, fully-informed look at the real-world impacts of a project. Without CEQ's regulatory mandate, agencies with narrower missions may be tempted to ignore cumulative effects, resulting in piecemeal decision-making that underestimates environmental damage. The public and decisionmakers would be left in the dark about the true combined consequences of federal actions.

D. Tribal consultation and shared leadership

CEQ's NEPA Regulations have played an important role in ensuring agencies consult with Tribal governments and consider Tribal expertise and rights in the NEPA process. The 1978 rules established that Tribal agencies (just like state agencies) should be involved in NEPA reviews as cooperating agencies when appropriate.[14] The recent Phase 2 final rule went even further, explicitly recognizing Indigenous Knowledge as a form of "high-quality information" and special expertise that agencies should consider.[15] It also required that environmental analyses address impacts on Tribal treaty rights and sacred sites and that agencies evaluate consistency with

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[13] *CEQ Begins Process of Restoring NEPA Review of Cumulative Impacts*, Sabin Ctr. for Climate Change L. (Oct. 6, 2021), https://climate.law.columbia.edu/content/ceq-begins-process-restoring-nepa-review-cumulative-impacts; Matt Petersen, *Examining the Phase 2 Final Rule's Impacts on the National Environmental Policy Act*, SWCA Environmental Consultants (May 17, 2024), https://www.swca.com/news/2024/05/examining-phase-2-final-rule%E2%80%99s-impacts-on-national-environmental-policy-act.

[14] 40 C.F.R. § 1508.5 (1978), https://www.govinfo.gov/content/pkg/CFR-2018-title40-vol37/pdf/CFR-2018-title40-vol37-sec1508-5.pdf.

[15] Hannah Perls, *NEPA Phase 2 Final Rule*, Harvard Env't & Energy L. Program (Aug. 8, 2024), https://eelp.law.harvard.edu/nepa-phase2-final.

Tribal laws and policies in EISs.[16] All of these provisions would vanish with the removal of the NEPA Regulations.

This is especially egregious because it removes a useful tool to implement policy requirements that agencies are still bound to follow. While executive orders (like E.O. 13175 on Tribal consultation) and underlying statutes and treaties would still call for Tribal consultation, the binding, government-wide NEPA requirements to implement those calls would be gone.[17] This loss particularly harms Tribal communities that have relied on NEPA reviews to highlight and address impacts to their ancestral lands, cultural resources, and treaty-protected resources.

In sum: eliminating the NEPA Regulations means losing uniform standards for analyzing environmental justice issues, climate effects, cumulative impacts, and Tribal resources; it means a setback for justice, science-based policy, and informed decision-making.

III. Reverting to a system with no NEPA Regulations will not achieve an outcome of "Unleashing American Energy," just the opposite will likely happen

History demonstrates that without uniform NEPA Regulations, legal chaos ensues. In NEPA's early years (1970–1978), before binding NEPA Regulations existed, federal agencies struggled to interpret the statute's requirements, leading to a patchwork of practices and a flood of litigation. The landmark case *Calvert Cliffs' Coordinating Committee v. AEC* (D.C. Cir. 1971) is a prime example: the Atomic Energy Commission had issued its own extremely lax NEPA procedures, which the court struck down as defeating NEPA's purpose, chastising that NEPA's mandates "must be complied with to the fullest extent" of the law.[18] Numerous early NEPA cases similarly arose solely because agencies lacked clear, consistent directives; courts had to step in to require, for instance, consideration of alternatives or public input where agencies had omitted them.[19] It was this very confusion and conflict that prompted the formulation of the first iteration of the NEPA Regulations in 1978. As noted, prior to that, nearly 70 different agency

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[16] Matt Petersen, *Examining the Phase 2 Final Rule's Impacts on the National Environmental Policy Act*, SWCA Environmental Consultants (May 17, 2024), https://www.swca.com/news/2024/05/examining-phase-2-final-rule%E2%80%99s-impacts-on-national-environmental-policy-act.

[17] Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2000), https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments.

[18] *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109 (D.C. Cir. 1971).

[19] *See, e.g., Nat. Res. Def. Council, Inc. v. Morton,* 458 F.2d 827 (D.C. Cir. 1972)*; Maryland v. Train,* 415 F. Supp. 116 (D. Md. 1976).

NEPA rulebooks existed, and the regulated community (including both project proponents and public interest groups) desired a more uniform approach.[20]

Removing the CEQ Regulations now would revive this disarray. Agencies would either revert to NEPA standards that do not function effectively absent the NEPA Regulations, or scramble to develop new rules without the benefit of CEQ's coordinating expertise. One of the impetuses for this recission is recent litigation, *Marin Audubon Society v. FAA*, 121 F.4th 902 (D.C. Cir. 2024), where the D.C. Circuit questioned CEQ's authority to issue its 2022-2024 regulations. Other courts have jumped into the fray as well, creating a patchwork of rulings.[21] Yet, if CEQ simply abdicates its regulatory role in response, it does not resolve the underlying legal uncertainty: it amplifies it. In fact, the CEQ's removal notice itself acknowledges that in the wake these court decisions, agencies will need to update their own NEPA procedures, and CEQ has merely left them the "discretion" to follow the soon-to-be removed regulations in the interim.[22] This is hardly a recipe for certainty or efficiency. An abrupt abandonment of decades-old NEPA regulation will only invite searching judicial review of each agency's choices, returning to the pre-rules era of NEPA marked by confusion and litigation.

Industry thrives with consistent regulation and known achievable standards. Throwing out the existing standards with no plan to establish new ones will not help industries to thrive, it will merely increase their risks and depress their interests in investing in U.S. projects. Investment will head to countries with clearer standards and more regulatory certainty.

IV. NEPA's 2023 amendments also strongly suggest that authoritative interpretation through the NEPA Regulations is necessary

This is not a time to increase uncertainty for NEPA practitioners. In 2023 Congress made the first changes in many years to the NEPA statute.[23] These changes are still so new that they have not been fully vetted by federal court decisions. By updating the NEPA Regulations after the 2023 change in the statute, and consistent with the statute, CEQ had quieted the uncertainty around the change. But now there will be wholesale confusion about whether the recently-

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[20] 43 Fed. Reg. 55,978–79 (Nov. 29, 1978).
[21] *Iowa v. Council on Env't Quality*, No. 1:24-cv-00089, 2025 U.S. Dist. LEXIS 36732 (D.N.D. Feb. 3, 2025)
[22] Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025), https://www.federalregister.gov/documents/2025/02/25/2025-03014/removal-of-national-environmental-policy-act-implementing-regulations.
[23] NEPA.gov, Fiscal Responsibility Act of 2023 (FRA), https://ceq.doe.gov/laws-regulations/fra.html (last visited Mar. 27, 2025).

updated statute supports past NEPA case law precedents. Agencies will have risk on both sides without a strong signal from CEQ of how to navigate these new waters.

V. Tribes are owed their due under treaties and other federal law, the trust responsibility requires CEQ to keep rules that benefit Tribes in place until they have been fully consulted

It is clearly an error to suggest that "This interim final rule is not a regulatory policy that has Tribal implications because it does not impose substantial direct compliance costs on Tribal governments (section 5(b)) and does not preempt Tribal law (section 5(c))."[24] As discussed above, the NEPA Regulations were a key tool for Tribes to obtain their rights to consultation with federal agencies. Moreover, Tribes retain many rights over resources that agencies must uphold in accordance with hundreds of treaties. Removing these rules fundamentally harms Tribes because it takes them out of the NEPA analysis process, and makes it less likely that they will be fully consulted or included as cooperating agencies.

The federal government's trust responsibility to Native American Tribes is a binding legal and moral obligation, described by the Supreme Court as "moral obligations of the highest responsibility and trust."[25] This fiduciary duty encompasses protecting Tribal treaty rights, lands, resources, and ensuring that federal actions do not harm those interests without Tribal consent.[26] In practical terms, honoring the trust responsibility in the context of environmental decision-making means robust Tribal consultation and careful consideration of impacts on Tribes.

CEQ's NEPA Regulations have been one of the most important tools by which this is accomplished. They require agencies to invite any affected Tribe to participate in environmental reviews (akin to state or local agencies), recognize Tribes' unique insights, and integrate Tribal input into analyses. CEQ's updated regulations explicitly incorporated Tribal treaty rights and knowledge in NEPA analyses and require that the "environmentally preferred alternative" be one that eliminates disproportionate impacts on Tribal resources and cultural sites.[27]

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[24] CEQ Regulation Removal at 10,616.
[25] *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942).
[26] Frequently Asked Questions, Bureau of Indian Affs., https://www.bia.gov/frequently-asked-questions (last visited Mar. 27, 2025).
[27] National Environmental Policy Act Implementing Regulations Revisions, 89 Fed. Reg. 27,304 (May 1, 2024), https://www.govinfo.gov/content/pkg/FR-2024-05-01/pdf/2024-08792.pdf Matt Petersen, *Examining the Phase 2 Final Rule's Impacts on the National Environmental Policy Act*,

Treaty rights and the trust responsibility are independent legal authorities requiring CEQ to stop its rescission of the NEPA Regulations. Key provisions of the NEPA Regulations reflect the United States' legal commitment to consult and work with Tribes on a government-to-government basis, and eliminating the CEQ regulations would undermine that commitment. Without the NEPA Regulations, an agency that lacks awareness of its many duties under the law could omit these analyses, project proponents might attempt to rush decisions without the federal government consulting Tribes, and Tribes may be forced to sue to protect their rights and resources if agencies fail to adhere to the best practices previously enshrined in the NEPA Regulations. As long as the treaties and trust responsibilities that our nation holds to Tribes remain the "supreme Law of the Land,"[28] CEQ must keep in place any rules that help federal agencies meet those obligations. The NEPA Regulations unquestionably do exactly that.

VI. States like Minnesota have their own equivalent environmental review laws and interpretive rules to assist with applying the law, but by eliminating the NEPA Regulations CEQ will also harm these States' ability to coordinate their environmental review efficiently

NEPA reviews are best accomplished through the cooperation of interested expert agencies who can lend their expertise and perspective to the environmental review document. When state and federal agencies cannot work together, they often fall into litigation and projects are delayed by incomplete NEPA analysis that was presented as if it was adequate. This has happened even under the purview of the NEPA Regulations, when agencies ignore their contemporaries' comments on the record and thereby fail to acknowledge true scientific controversy over their proposed action.[29]

When agencies cannot trust each other's environmental analyses then state or local environmental analyses will proceed disjointed entirely from the NEPA process. This happened in Minnesota in 2019 when the state chose to not join the federal agency review of a controversial mining proposal: "The Minnesota DNR has informed federal agencies and Twin Metals Minnesota that, if and when the company submits a complete project proposal, the DNR

SWCA Environmental Consultants (May 17, 2024), https://www.swca.com/news/2024/05/examining-phase-2-final-rule%E2%80%99s-impacts-on-national-environmental-policy-act.

[28] U.S. CONST., Art. VI, cl. 2.

[29] *Nat'l Parks Conservation Ass'n v. Semonite*, 916 F.3d 1075 (D.C. Cir. 2019) (setting precedent on an issue of first impression in the D.C. Circuit concerning what constitutes a "controversial" action requiring preparation of an Environmental Impact Statement under NEPA)

will prepare an independent, state-only Environmental Impact Statement (EIS) for the project."[30] Thus, in order to clear environmental review consistent with both NEPA and the Minnesota Environmental Policy Act, this project would have had double the scrutiny, and the different EISes may have reached different conclusions leading to inevitable divergence in agency decisions and litigation. This project's environmental review limped along for three more years before being put on hold by the state agency.[31] Years and staff time were wasted preparing environmental analyses that will potentially never be taken up again, and if they are may still be done in an uncoordinated fashion in the absence of any standard set by the NEPA Regulations.

How does requiring projects to do two or more EIS processes "unleash American Energy?" Spoiler: it does not. Nor does encouraging federal agencies to ignore each other's expertise, nor does federal agency ignorance of state or Tribal agency expertise. All of these predictable outcomes of removing the NEPA Regulations will lead to clunky and inefficient processes that result in wasted years and incomplete work.

VII. Conclusion

In conclusion, CURE strongly urges the CEQ to rethink this proposal which runs counter to the NEPA statute, existing and prevailing presidential policy, treaty obligations, the trust duty imposed on the federal government by its settler-colonialist past, and basic common sense. If CEQ truly wants to support industrial development in this country it should assure that NEPA works well across all the agencies. It should learn from past mistakes and not try to sideline rural communities or Tribal governments or members in a short-sighted and self-defeating attempt to dismantle the status-quo. CEQ should pause this attempt to remove the NEPA Regulations and consider how it can best comply with its legal duties that go far beyond any single Executive Order or administration.

/s/ Dawson Weathers
Legal Intern
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/s/ Hudson B. Kingston
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[30] Press Release, MN DNR, *DNR Statement on Decision Regarding Twin Metals Environmental Review Process*, (Nov. 22, 2019), https://content.govdelivery.com/accounts/MNDNR/bulletins/26e222d.
[31] MN DNR statement, *Twin Metals Minnesota Project – Environmental Impact Statement (EIS)*, Feb. 1, 2022, https://www.dnr.state.mn.us/input/environmentalreview/twinmetals/index.html.